

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TRACY PETERS,

Petitioner,

v.

Case No. 08-C-729

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

This court denied petitioner's § 2255 motion to vacate, in which he argued this court lacked jurisdiction over his criminal case because the crime did not occur in "Indian country." He has now filed a notice of appeal and request for certificate of appealability. The certificate of appealability may issue only if the applicant makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To do so, the appellant must demonstrate that reasonable jurists could debate whether this challenge in her habeas petition should have been resolved in a different manner or that the issue presented was adequate to deserve encouragement to proceed further. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). I do not conclude that petitioner's argument regarding "Indian country" is a matter about which reasonable jurists could disagree. Accordingly, the COA is denied.

I construe petitioner's motion for leave to proceed *in forma pauperis* as a motion for leave to proceed *in forma pauperis* on appeal. For the same reasons noted above, the request to proceed

in forma pauperis on appeal is also denied. Although the “good faith” standard for IFP status is a more lenient one, I conclude this appeal lacks merit and is not brought in good faith.

Accordingly, the certificate of appealability is **DENIED** and leave to appeal *in forma pauperis* is also **DENIED**. The appellate filing fee is due within fourteen days of the date of this order or the appeal may be dismissed. In the alternative, the petitioner may file a motion to proceed on appeal *in forma pauperis* in the court of appeals with 30 days of receiving notice that this court denied leave to appeal *in forma pauperis*. Fed. R. App. P. 24(a)(5).

SO ORDERED this 14th day of October, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge